

## REMARKS

### *Preliminary Remarks:*

Upon entry of this Amendment, claims 17, 19, 20 to 24, 26 to 28, and 33 to 38 will be pending of which claims 17, 21, 26, and 34 are independent. Claims 18, 25, and 29 to 32 are cancelled without prejudice to, or disclaimer of, the underlying subject matter; claims 1 to 16 were previously cancelled. Claims 17, 21, 26, 27, 34, and 36 are amended to limit n to 6 (claims 17, 21, 26, 27, 34) and to better correspond to current U.S. patent practice (claim 36). Claims 37 and 38 are new. Support for the claim amendments and the new claims may be found in the specification as filed. *See, for example*, page 3, line 17. Therefore, no new matter is added.

This Amendment is accompanied by a Declaration under 37 C.F.R. § 1.132 by the first named inventor, Dr. Peter Baur.

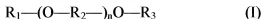
### *Claim Rejections:*

#### Rejection under 35 U.S.C. § 103

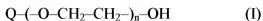
Claims 17 to 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vogt *et al.* (U.S. Pat. No. 6,656,883) in view of Feucht *et al.* (U.S. Pat. No. 6,395,684) and Feucht *et al.* (U.S. Pat. No. 6,562,760). Claims 18, 25, and 29 to 32 are cancelled and Applicants respectfully traverse this rejection with respect to claims 17, 19, 20 to 24, 26 to 28, and 33 to 38.

According to the Examiner, Vogt *et al.* teach a “formulation comprising a) a herbicide, b) a solid carrier and c) formula (I) as a nonionic surfactant . . . .” The Examiner’s position is “that the surfactants of formula (I) [of Vogt *et al.*] which aid dispersion are inherently penetrating enhancers.” However, the Examiner fails to point out that the surfactants of formula (I) of Vogt are not the same as the penetrating compounds comprising an alcohol ethoxylate represented by the formula (I) as claimed.

The surfactants of formula (I) of Vogt *et al.* are defined in column 1, lines 64 to 67 as:



wherein R<sub>1</sub> is C<sub>8</sub>-C<sub>16</sub> alkyl or C<sub>8</sub>-C<sub>16</sub> alkenyl, R<sub>2</sub> is identical or different C<sub>2</sub>-C<sub>4</sub> alkylene, R<sub>3</sub> is hydrogen or C<sub>1</sub>-C<sub>4</sub> alkyl, and n is an integer from 5-10 (emphasis added). As claimed, the penetrating compounds comprising an alcohol ethoxylate represented by the formula (I):



wherein Q represents a branched tridecyl radical and, as amended, n represents 6.

A branched tridecyl radical is not disclosed in Vogt *et al.* Further, as Table I in the specification indicates, alcohol ethoxylates containing branched tridecyl radicals show superior properties compared to other radicals (e.g., C<sub>8</sub>-C<sub>16</sub> alkyl or C<sub>8</sub>-C<sub>16</sub> alkenyl radicals as generically disclosed by Vogt *et al.*). The alcohol ethoxylates containing branched tridecyl radicals, for example Marlipal<sup>®</sup> 13/60 and Lutensol<sup>®</sup> TO6, both of which contain isotridecyl ethoxylate, provide significantly higher uptake than all the other alcohol ethoxylates, none of which contain branched tridecyl radicals. *See*, Table I at page 16.

In addition, as the attached Declaration under 37 C.F.R. § 1.132 by inventor Dr. Peter Baur shows, the rate of uptake of an herbicidally active triazolinone (propoxycarbazone-sodium) decreases when the triazolinone is in a composition with Lutensol<sup>®</sup> TO20, Lutensol<sup>®</sup> TO12, Lutensol<sup>®</sup> TO10, or Lutensol<sup>®</sup> TO8. However, when Lutensol<sup>®</sup> TO6 is used, the rate of uptake of the triazolinone unexpectedly increases:

Alcohol Ethoxylate	% uptake after 72 hours
Control	0.24
Lutensol <sup>®</sup> TO20	5.4
Lutensol <sup>®</sup> TO12	4.03
Lutensol <sup>®</sup> TO10	2.14
Lutensol <sup>®</sup> TO8	0.99
<b>Lutensol<sup>®</sup> TO6</b>	<b>14.1</b>

Further, when the uptake of an herbicidally active triazolinone (propoxycarbazone-sodium) in a composition with Lutensol<sup>®</sup> TO6 (containing a branched tridecyl radical with an ethoxylation of n = 6, as claimed) is compared to compositions of the triazolinone with alcohol ethoxylates having linear tridecyl radicals – Dehydol<sup>®</sup> LS8 (C<sub>12</sub> to C<sub>14</sub> with an ethoxylation of n = 8); Genapol<sup>®</sup> C100 (C<sub>12.5</sub> with an ethoxylation of n = 8.4; and Simulsol<sup>™</sup> P4 (C<sub>12</sub> with an ethoxylation of n = 4) – the composition of the triazolinone with Lutensol<sup>®</sup> TO6 was found to be unexpectedly superior:

Alcohol Ethoxylate	% uptake after 24 hours
Control	0.1
Dehydol <sup>®</sup> LS8	3.3
Genapol <sup>®</sup> C100	2.7
Simulsol <sup>™</sup> P4	3.3
<b>Lutensol<sup>®</sup> TO6</b>	<b>20.0</b>

First, there is nothing in *Vogt et al.* that would lead one of ordinary skill in the art to select for compounds containing branched tridecyl radicals from the many, many possible  $R_1$ s that are containing within the definition “ $C_8$ - $C_{16}$  alkyl or  $C_8$ - $C_{16}$  alkenyl” from *Vogt et al.* Second, there is nothing in *Vogt et al.* that would lead one of ordinary skill in the art to select for alcohol ethoxylates with an ethoxylation of  $n = 6$ . *Feucht et al.* '684 nor *Feucht et al.* '760 overcome these substantial deficiencies in *Vogt et al.*

In other words, it would not have been obvious to one of ordinary skill in the art from the teachings of *Vogt et al.*, *Feucht et al.* '684, or *Feucht et al.* '760, alone or in combination, to use only alcohol ethoxylates that contain branched tridecyl radicals and an ethoxylation of  $n = 6$  in compositions with one or more herbicidally active triazolinones to improve the penetration of the herbicidally active triazolinones into a plant. Certainly, one of ordinary skill in the art could not have predicted that the alcohol ethoxylates containing branched tridecyl radicals and an ethoxylation of  $n = 6$  would have superior penetrating abilities as compared to other alcohol ethoxylates (*e.g.*, not containing branched tridecyl radicals or with other ethoxylation values).

Therefore, Applicants respectfully submit that 17, 19, 20 to 24, 26 to 28, and 33 to 38 are not unpatentable over *Vogt et al.* in view of *Feucht et al.* '684 and *Feucht et al.* '760 and respectfully request withdrawal of the rejection under 35 U.S.C. § 103(a).

CONCLUSION

In view of the amendments and remarks above, and the submitted Declaration, Applicants respectfully submit that this application is in condition for allowance and request favorable action thereon. The Examiner is invited to contact the undersigned if any additional information is required.

As this response is filed within the statutory period for reply, Applicants believe that no fees, other than for a two-month extension of time, are due. If any additional fees are required, they may be charged to Deposit Account No. 50-4254, referencing Attorney Docket No. 2903925-153000.

Respectfully submitted,

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& BERKOWITZ, P.C.



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